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OFFICE OF PETITIONS

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PATENT E

Customer No. 22,852

Attorney Docket No.: 6969.0028

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Jennifer D. TOUSIGNANT et al.

Serial No.: 09/335,689

Filed: June 18, 1999

For: CATIONIC AMPHIPHILIE  
MICELLAR COMPLEXES

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) Group Art Unit: 1635  
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) Examiner: Richard A. Schnizer  
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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.182 TO AMEND ABANDONED**  
**APPLICATION TO PERFECT PRIORITY CLAIM UNDER 35 U.S.C. § 119(e)**

Pursuant to 37 C.F.R. § 1.182, Applicants hereby petition for entry of the enclosed amendment in this application, now abandoned, for a purpose other than prosecution. Specifically, Applicants request that this abandoned application (09/335,689, the '689 application) be amended for the purpose of perfecting a claim for the benefit of the earlier-filed U.S. Provisional Application No. 60/089,879, (filed on June 19, 1998; the '879 provisional application) under 35 U.S.C. § 119(e).

Amendment of an abandoned patent application is permitted to insert a specific reference to an earlier-filed application for the purpose of correcting a claim for the

benefit of one or more earlier-filed applications. See *Sampson v. Commissioner of Patents and Trademarks*, 195 U.S.P.Q. 136 (D.C.D.C. 1976). In the *Sampson* case, the applicant was permitted to insert a specific reference to an earlier-filed, copending application in several abandoned applications. This amendment was done for the purpose of perfecting a claim for benefit of one or more earlier-filed applications under 35 U.S.C. § 120 in an issued patent. The patent relied on those abandoned applications to establish the chain of co-pendency required for a valid claim for benefit under 35 U.S.C. § 120.

In the present case, Applicants claimed the benefit of priority from the '879 provisional application in the Declaration and Power of Attorney filed on September 22, 1999, in the '689 application (attached as Exhibit A). However, the specification of the '689 application was not amended as required by 35 U.S.C. § 119(e) in order to properly claim the benefit of priority from the '879 provisional application.

The '689 application was allowed to become abandoned in favor of Application No. 10/301,867, filed on November 22, 2002 (the '867 application), where the claims pending in the '689 application at the time of abandonment continue to be prosecuted. The '867 application was amended at the time of filing to claim the benefit of the filing date of the '879 provisional application. However, because the claim for priority in the intervening '689 application (this application) was not perfected, the '867 application has not been accorded the benefit of the filing date of the '879 provisional application.

The omission of the specific reference to the '879 provisional application in this abandoned application, was inadvertent and only discovered by Applicants upon recent review of the file.

This abandoned application otherwise meets the requirements for obtaining the benefit of the filing date of the '879 provisional application under 35 U.S.C. § 119(e) because this application was filed within twelve months of the filing date of the '879 provisional application; this application has at least one inventor in common with the '879 provisional application; and this application contains disclosure in common with the '879 provisional application. Accordingly, entry of the attached Amendment adding the specific reference to the '879 provisional application in the first sentence of the specification after the title is respectfully requested so that Applicants may perfect their claim for priority and receive the benefit of the earlier filing date of the '879 provisional application in the '867 application.

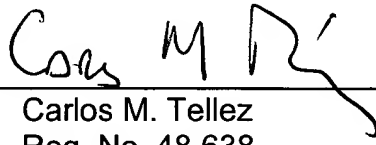
Favorable consideration, granting of this petition, and entry of the enclosed Amendment in the above-identified abandoned application is respectfully requested.

Attorney Docket No. **6969.0028**  
Patent Application No. **09/335,689**

This Petition is accompanied by a surcharge fee of \$130.00, as set forth in 37 C.F.R. § 1.17(h). If there are any additional fees due in connection with this Petition, please charge our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:   
Carlos M. Tellez  
Reg. No. 48,638

Dated: March 17, 2004